

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
APPEAL FROM ORDER NO.613 OF 2007  
IN  
NOTICE OF MOTION NO.1976 OF 2006  
IN  
L.C. SUIT NO.2217 OF 2006**

(1) Prem Jethanand Shahani  
(2) Mrs. Aruna Prem Shahani... Appellants  
(Orig.Plaintiffs)

Versus

(1) The Municipal Corporation of  
Greater Mumbai .. Respondent No.1  
(Orig.Defendant No.1)  
(2) Casa Maria Co-op.Hsg.Soc.Ltd ..Respondent No.2  
(Orig.Defendant No.2)

Shri Rajan Malkani i/b. Shri Rajan Malkani & Co. for  
the Appellants  
Ms. Geeta Joglekar for the Respondent No.1-BMC  
Shri R.S.Tripathi i/b. Shri R.K.Thakkar, for the  
Respondent No.2

CORAM : S.R. SATHE, J.

DATED : 21/08/2007

**ORAL ORDER:-**

1. By consent heard finally at admission stage.
  
2. Appellants-original plaintiffs in L.C. Suit No.2217 of 2006 have preferred this appeal against the order passed by the Judge, City Civil Court, Bombay whereby the Plaintiffs' application for temporary injunction restraining the defendants-Municipal

Corporation of Greater Bombay from demolishing the suit garage was dismissed. For the sake of convenience, hereafter the parties shall be referred to as 'Plaintiffs' and 'defendants'.

3. The brief facts giving rise to this appeal are as under:-

In the year 1990, Plaintiffs purchased flat bearing No.301, third floor situated in building known as Casa Maria Co-op. Housing Society. At that time only, they also took one garage which according to them was known as garage No.2 situated on the ground floor of the said building. In the year 1983, the Plaintiffs applied to defendant No.1 Municipal Corporation of Greater Mumbai for temporary permission for enclosing the suit garage which was under the stilt. The Corporation granted such permission for particular period. Thereafter, Plaintiff's son was suffering from mental disease. It was, therefore, not possible for the Plaintiffs to keep their son away. With a view to keep the son under observation, plaintiffs started business as traveling agent in the suit garage. For that purpose, Plaintiffs also obtained consent of the then

Managing Committee of the Casa Maria Society. It is Plaintiff's case that Municipal Corporation recovered taxes for the flat and garage from them. However, on 18/03/2006, the defendant No.1 Municipal Corporation issued notice under section 351 of the Mumbai Municipal Corporation Act (hereafter called as MMC Act) to the Plaintiffs and called upon them to show cause as to why the unauthorized construction of garage carried out below the stilt should not be demolished. The Plaintiff failed to show cause and defendants decided to demolish the structure. Accordingly, they issued letter dated 04/05/2006 to Plaintiffs. Hence, Plaintiffs filed the present suit for declaration that the notice issued by defendants-Municipal Corporation on 18/03/2006 was bad and illegal and for permanent injunction restraining them from demolishing the suit garage.

4. The Plaintiffs also filed Notice of Motion No.1976 of 2006 and prayed for temporary injunction restraining the defendants-municipal corporation from demolishing the suit garage till the disposal of the suit.

5. The defendants-Municipal Corporation filed Written Statement and opposed the suit claim. They contended that only temporary permission on certain terms was granted to Plaintiffs. Thereafter, it was never renewed and under the guise of temporary permission the Plaintiffs in fact carried out permanent structure and closed the stilt portion into covered garage without obtaining necessary permission from the Corporation and also started using the said garage for commercial purpose. The defendant-Corporation, therefore, contended that notice issued by them under the MMC Act is legal and valid and Corporation is entitled to demolish the suit garage.

6. The defendant No.2 Casa Maria Co-operative Housing Society also took similar contention and prayed for the dismissal of the application.

7. After hearing both the learned Advocates, the learned Judge, City Civil Court, Mumbai came to the conclusion that the Plaintiffs have carried out permanent structure without permission and Plaintiffs were also guilty of suppressing material fact and had

not approached with clean hands. He also held that Plaintiffs have failed to make out prima facie case for granting temporary injunction. Naturally, he dismissed the Notice of Motion.

8. Being aggrieved by the same, Plaintiffs have filed the present appeal. In this appeal before me, Shri Rajan Malkani, learned Advocate for the Plaintiffs has urged 2 points. Firstly, he submitted that Plaintiffs are not at all concerned with the garage No.8 mentioned in the suit notice and under the guise of demolishing the garage mentioned in the suit notice, the defendant-corporation is trying to demolish their covered garage. Secondly, he canvassed before me that the balance of convenience is in favour of Plaintiff. If the garage in question is demolished, plaintiffs would not be in a position to carry out their business and secondly, they will not be able to look after their son who is suffering from mental disease. Besides this, he submitted that if the defendant-corporation is not restrained, they will demolish the garage and secondly, the entire building will collapse. As against this, Ms. Geeta Jogalekar, learned Advocate for the Corporation

supported the order passed by the learned Trial Judge. The learned advocate for the defendant No.2 submitted that the garage in question is unauthorized.

9. It is not in dispute that Plaintiff is a owner of one flat situated in Casa Maria Co-operative Housing Society. Admittedly, he owns garage situated on the ground floor of the said building. Though a feeble attempt has been made on behalf of the Plaintiffs to show that there is some dispute about the identification of the property and that under the guise of demolishing the unauthorized permanent structure made under the stilt mentioned in the suit notice, the defendant-corporation is in fact demolishing garage No.2 which is owned by the Plaintiffs, there is absolutely no evidence worth the name to show that the garage which the defendant-corporation intends to demolish is separate than one where Plaintiff is carrying out his business. It is true that initially Plaintiffs had made an application to the defendant-corporation seeking permission to enclose garage and temporary permission was sought and it was granted. However, it was for specific period. Admittedly,

thereafter, the said permission has not been renewed by the Corporation. Merely because Plaintiff had submitted another application asking for extension of earlier permission and the defendant-corporation did not give any reply, one can not jump to the conclusion that such non reply by the Corporation amounts to granting of extension or fresh permission. There is absolutely no substance in the arguments advanced by the learned Advocate for the Plaintiffs in this behalf.

10. It is needless to say that merely because Corporation had recovered taxes for the suit property that by itself would not be sufficient to show that the structure in question is legal or authorized. On the contrary, we find that in the instant case Plaintiffs have deliberately suppressed the terms and conditions on which temporary permission was granted to them. Learned Trial Judge, therefore, held that Plaintiffs have not approached to the Court with clean hands and as such they are not entitled to get discretionary relief.

11. The notice issued by the Corporation dated

18/03/2006 is placed on record. From the perusal of the same, it is very clear that Corporation had asked the Plaintiffs to remove the unauthorized enclosure of stilt portion which is of brick masonry walls and to stop unauthorized use of the said portion for commercial purpose. There is absolutely not an iota of evidence to show prima facie that Plaintiffs were permitted to cover the portion below the stilt by carrying out permanent construction with brick masonry wall. From the photograph which is produced on record it appears that Plaintiffs covered the portion below stilt by carrying out permanent construction and also put shutter on one side. It is not even Plaintiffs' case that permission for such permanent structure was obtained by him or the Developer. In fact, the society has brought on record that the said portion below the stilt was to be kept open and was to be used for parking vehicle only. However, we find that Plaintiffs unauthorizedly covered the said portion without permission and started doing commercial business in the suit garage. Thus, the said act of the Plaintiffs is totally illegal and unauthorized. Defendant-corporation is fully justified in issuing suit notice. They are

entitled to act on the said notice. So, the learned Judge has rightly held that the Plaintiff has failed to make out any prima facie case. The balance of convenience is also not in favour of the Plaintiff. The defendant-corporation has not asked the Plaintiffs to demolish the pillars or columns of the stilt. The Corporation has only asked to remove the brick walls as a result of which the portion below the stilt has been covered unauthorizedly. When the total construction of the garage is unauthorized and illegal, Plaintiffs are not entitled to get temporary injunction. Granting temporary injunction as prayed by the Plaintiff in the instant case would certainly amount to putting premium on Plaintiffs' wrong. So, I have no hesitation to hold that learned Trial Judge has rightly dismissed the Notice of Motion. Hence, I pass the following order :-

**O R D E R**

Appeal is dismissed with costs.

**(S.R. SATHE, J.)**